



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB1142

Introduced 2/11/2009, by Rep. Michael W. Tryon

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Manufactured Housing Buyer Protection Act. Provides that, if, after a reasonable number of attempts, the seller of a manufactured housing unit is unable to conform the manufactured housing unit to any of its applicable express warranties, then the manufacturer must either provide the consumer with a new manufactured housing unit of like model line, if available, or otherwise a comparable manufactured housing unit as a replacement, or accept the return of the manufactured housing unit from the consumer and refund to the consumer the full purchase price or lease cost of the new manufactured housing unit, including all collateral charges, less a reasonable allowance for consumer use of the manufactured housing unit, but only when the consumer has first resorted to an informal settlement procedure applicable to such disputes. Provides that persons electing to proceed and settle under the Act are barred from a separate cause of action under the Uniform Commercial Code. Provides guidelines for commencement of such actions. Requires the seller who sells a new manufactured housing unit to a consumer, upon delivery of that manufactured housing unit to the consumer, to provide the consumer with a written statement clearly and conspicuously setting forth in full detail the consumer's rights under specified provisions of the Act. Makes the Act applicable to manufactured housing sold after the effective date of this Act.

LRB096 08678 KTG 18803 b

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Manufactured Housing Buyer Protection Act.

6 Section 5. Definitions. As used in this Act:

7 "Consumer" means an individual who purchases or leases for  
8 a period of at least one year a new manufactured housing unit  
9 from the seller for primarily personal, household, or family  
10 purposes.

11 "Express warranty" has the meaning given to that term in  
12 the Uniform Commercial Code.

13 "Manufactured housing" or "manufactured housing unit"  
14 means a building assembly or system of building sub-assemblies,  
15 designed for habitation as a dwelling for one or more persons,  
16 including the necessary electrical, plumbing, heating,  
17 ventilating and other service systems, that is of closed or  
18 open construction and that is made or assembled by a  
19 manufacturer, on or off the building site, for installation, or  
20 assembly and installation, on the building site, with a  
21 permanent foundation.

22 "Nonconformity" refers to a manufactured housing unit's  
23 failure to conform to all express warranties applicable to that

1 manufactured housing unit, which failure substantially impairs  
2 the use, market value, or safety of that manufactured housing  
3 unit.

4 "Seller" means the manufacturer of manufactured housing,  
5 that manufacturer's agent or distributor, or that  
6 manufacturer's authorized dealer.

7 "Statutory warranty period" means the period of one year  
8 after the date of the delivery of a manufactured housing unit  
9 to the consumer who purchased or leased it.

10 "Lease cost" includes deposits, fees, taxes, down  
11 payments, periodic payments, and any other amount paid to a  
12 seller by a consumer in connection with the lease of a  
13 manufactured housing unit.

14 Section 10. Failure of manufactured housing to conform;  
15 remedies; presumptions.

16 (a) If, after a reasonable number of attempts, the seller  
17 is unable to conform the manufactured housing unit to any of  
18 its applicable express warranties, then the manufacturer must  
19 either provide the consumer with a new manufactured housing  
20 unit of like model line, if available, or otherwise a  
21 comparable manufactured housing unit as a replacement, or  
22 accept the return of the manufactured housing unit from the  
23 consumer and refund to the consumer the full purchase price or  
24 lease cost of the new manufactured housing unit, including all  
25 collateral charges, less a reasonable allowance for consumer

1 use of the manufactured housing unit. For purposes of this  
2 Section, "collateral charges" does not include taxes paid by  
3 the purchaser on the initial purchase of the new manufactured  
4 housing unit. The retailer who initially sold the manufactured  
5 housing unit may file a claim for credit for taxes paid  
6 pursuant to the terms of Sections 6, 6a, 6b, and 6c of the  
7 Retailers' Occupation Tax Act. Should the manufactured housing  
8 unit be converted, modified, or altered in a way other than the  
9 manufacturer's original design, the party that performed the  
10 conversion or modification shall be liable under the provisions  
11 of this Act, provided the part or parts causing the  
12 manufactured housing unit not to perform according to its  
13 warranty were altered or modified.

14 (b) A presumption that a reasonable number of attempts have  
15 been undertaken to conform a new manufactured housing unit to  
16 its express warranties shall arise where, within the statutory  
17 warranty period,

18 (1) the same nonconformity has been subject to repair  
19 by the seller, its agents or authorized dealers during the  
20 statutory warranty period, 4 or more times, and such  
21 nonconformity continues to exist; or

22 (2) the manufactured housing unit has been out of  
23 service by reason of repair of nonconformities for a total  
24 of 30 or more business days during the statutory warranty  
25 period.

26 (c) A reasonable allowance for consumer use of a

1 manufactured housing unit is that amount directly attributable  
2 to the wear and tear incurred by the new manufactured housing  
3 unit as a result of its having been used prior to the first  
4 report of a nonconformity to the seller and during any  
5 subsequent period in which it is not out of service by reason  
6 of repair.

7 (d) The fact that a new manufactured housing unit's failure  
8 to conform to an express warranty is the result of abuse,  
9 neglect, or unauthorized modifications or alterations is an  
10 affirmative defense to claims brought under this Act.

11 (e) The statutory warranty period of a new manufactured  
12 housing unit shall be suspended for any period of time during  
13 which repair services are not available to the consumer because  
14 of a war, invasion or strike, or a fire, flood, or other  
15 natural disaster.

16 (f) Refunds made pursuant to this Act shall be made to the  
17 consumer, and lien holder if any exists, as their respective  
18 interests appear.

19 (g) For the purposes of this Act, a manufacturer sells a  
20 new manufactured housing unit to a consumer when he provides  
21 that consumer with a replacement manufactured housing unit  
22 pursuant to subsection (a).

23 (h) In no event shall the presumption herein provided apply  
24 against a manufacturer, his agent, distributor or dealer unless  
25 the manufacturer has received prior direct written  
26 notification from or on behalf of the consumer, and has an

1 opportunity to correct the alleged defect.

2 Section 15. Informal settlement procedure.

3 (a) The provisions of subsection (a) of Section 10 shall  
4 not apply, unless the consumer has first resorted to an  
5 informal settlement procedure applicable to disputes to which  
6 that subsection would apply where:

7 (1) the manufacturer of the new manufactured housing  
8 unit has established such a procedure;

9 (2) the procedure conforms:

10 (A) substantially with the provisions of Title 16,  
11 Code of Federal Regulation, Part 703, as from time to  
12 time amended; and

13 (B) to the requirements of subsection (c); and

14 (3) The consumer has received from the seller adequate  
15 written notice of the existence of the procedure. Adequate  
16 written notice includes but is not limited to the  
17 incorporation of the informal dispute settlement procedure  
18 into the terms of the written warranty to which the  
19 manufactured housing unit does not conform.

20 (b) If the consumer is dissatisfied with the decision  
21 reached in an informal dispute settlement procedure or the  
22 results of such a decision, he may bring a civil action to  
23 enforce his rights under subsection (a) of Section 3. The  
24 decision reached in the informal dispute settlement procedure  
25 is admissible in such a civil action. The period of limitations

1 for a civil action to enforce a consumer's rights or remedies  
2 under subsection (a) of Section 3 shall be extended for a  
3 period equal to the number of days the subject matter of the  
4 civil action was pending in the informal dispute settlement  
5 procedure.

6 (c) A disclosure of the decision in an informal dispute  
7 settlement procedure shall include notice to the consumer of  
8 the provisions of subsection (b).

9 Section 20. Election to proceed and settle. Persons  
10 electing to proceed and settle under this Act are barred from a  
11 separate cause of action under the Uniform Commercial Code.

12 Section 25. Commencement of action. Any action brought  
13 under this Act must be commenced within 18 months following the  
14 date of original delivery of the manufactured housing unit to  
15 the consumer.

16 Section 30. Written statement. The seller who sells a new  
17 manufactured housing unit to a consumer, must, upon delivery of  
18 that manufactured housing unit to the consumer, provide the  
19 consumer with a written statement clearly and conspicuously  
20 setting forth in full detail the consumer's rights under  
21 subsection (a) of Section 10, and the presumptions created by  
22 subsection (b) of that Section.

1           Section 35. Application of Act. This Act shall apply to  
2   manufactured housing sold after the effective date of this Act.